

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3997 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE N.N.MATHUR

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1. Whether Reporters of Local Papers may be allowed
to see the judgements? yes
2. To be referred to the Reporter or not? yes
3. Whether Their Lordships wish to see the fair copy
of the judgement? no
4. Whether this case involves a substantial question
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder? no
5. Whether it is to be circulated to the Civil Judge?
no

PREMJIBHAI D KARANE alias BABUBHAI

Versus

AHMEDABAD MUNICIPAL CORPORATION

Appearance:

MR SR BRAHMBHATT for Petitioner
MR PRASHANT G DESAI for Respondent No. 1
MR DA BAMBHANIA for Respondent No. 2

CORAM : MR.JUSTICE N.N.MATHUR

Date of decision: 11/07/96

ORAL JUDGMENT

This is a Rule taken out at the instance of the
petitioner-Premjibhai D Karana, a tenant, who is running
'Mailing Labour Work' under the seal and title of Mehul
Consultancy Services on the C.G. Road in the City of
Ahmedabad, against the respondent-Ahmedabad Municipal
Corporation for an appropriate writ or direction under

Article 226 of the Constitution of India quashing and setting aside the order of the Municipal Commissioner, Ahmedabad dated 31.12.1994 under section 210 (1) (a) of the Bombay Provincial Municipal Act, 1959 (for short, 'the BPMC Act') prescribing the street-line and the notices dated 29.1.1995 and 28.5.1995 under section 212 of the BPMC Act, calling upon the petitioner to demolish or remove the portion of the shop coming within the road-line within a period of 35 days and to make the land underneath open.

2. The facts as culled out from the pleadings of the parties appear that the petitioner, a tenant in the building situated in Jagidshpur T.P. Scheme No.III, Final plot No.318, received a notice dated 29.1.1995 calling upon him to show cause as to why a part of the shop which is coming in the way of widening the road should not be demolished. The petitioner submitted a detailed reply through his Advocate. As there was no reply from the respondent-Corporation, the petitioner approached this Court by way of filing Special Civil Application bearing No.4193/95. The said Special Civil Application was dismissed as withdrawn by order of the Court dated 19.9.95. However, the petitioner was given liberty to make all submissions factually or legally before the Corporation by way of representation. The petitioner, thereafter made a detailed representation dated 21.9.1995. While the petitioner's representation was pending, he came across the news item in the newspaper 'Sandesh', Ahmedabad edition dated 3.5.1996 wherein it was mentioned that the Corporation had decided to grant F.S.I. to a property which is going to be damaged or acquired because of the widening of the road. As the property measurements were belonging to the subject property, the petitioner sent a letter to the Corporation. However, the respondent-Corporation issued a notice dated 28.5.1996 to the petitioner stating that his contentions are untenable, and therefore, he will have to demolish the portion of his shop, otherwise, forcible action of demolition will be taken. The said notice was issued in pursuance of a Resolution of the Standing Committee of the corporation dated 26.6.1995. It is not in dispute that the width of the road as provided under the Town Planning Scheme No.3 is 80 ft. The shop of the petitioner is located on the final plot No.318 earmarked finally under the Town Planning scheme No.3 in Chanakiapura Ward. The said scheme under the Bombay Town Planning Act is now deemed to be a scheme under the Gujarat Town Planning and Urban Development Act, 1976 (hereinafter referred to as the 'New Town Planning Act, 1976'). In view of section 124 of the New

Act, the scheme made under the Bombay Town Planning Act is deemed to have been made under new Act. The Development Plan was prepared in the year 1983 under the new Town Planning Act which provides 100 ft. wide Road on the C. G. Road. Recently the respondent-Corporation has undertaken the renovation of the entire C.G. Road.

3. It is contended by Mr Shailesh Brahmbhatt, learned Advocate for the petitioner that the impugned order prescribing the road line and as a consequence, notice for demolition is ex facie illegal, as it has an effect of alteration or variation of the sanctioned scheme. Advancing the contentions, the learned Advocate submits that the C.G. Road and the Final plot No. 318 are part of the sanctioned scheme under the provisions of the New Town Planning Act and as such it is part of the statute in view of section 65 of the Act, and this cannot be altered in any manner except in accordance with the provisions of section 71 of the Act. Under the sanctioned scheme, width of the C.G. Road is 80 ft. though under the Development Plan it is 100 ft. A scheme cannot be subordinate to Development Plan. The powers of the Commissioner under section 210 are of executive nature. The effect of prescribing the line is not only a change in the width of the road but also shortening the size of the final plot.

4. On the other hand, Mr P G Desai, learned Advocate for the respondent-Corporation submits that even if the sanctioned T.P. scheme is in operation, the Corporation has power to lay out the road in the development plan under the provisions of the Town Planning Act. The scope and purpose of the development plan and the Town Planning Scheme are entirely different. He further submits that the development plan is also required to be sanctioned by the State Government under section 17 of the Act. The development plan comes into operation on the specified date. The scheme is to be prepared by the Town Planning Officer and the same is required to be finally sanctioned by the State Government and on being sanctioned the same becomes the part of the Act. To prescribe a regular line on the road is a distinct power of the Municipal Corporation under section 210 of the BMC Act. He submits that there is no provision under the Town Planning Act prescribing a regular line for the street. Section 41 provides for certain items to be incorporated in the scheme, one of which is road. He, therefore, submits that prescribing a street-line by the Commissioner under section 210 of the BMC Act and providing a provision of road in the scheme under the

Town Planning Act are two different things. He further submits that the new Town Planning Act provides for preparation and sanction of the development plan and the regulation. The regulation prepared along with the development plan also empowers the Commissioner to provide a regular line of street of a width different from those shown in the development plan. He has referred to provision of clause 4 (c) under part I of the regulation, which reads as under:

"Notwithstanding anything contained in the Development Plan or in these rules the Commissioner may, from time, prescribe under section 210 of the Bombay Provincial Municipal Corporations Act regular lines of streets of widths different from those shown in the Development Plan, provided that it shall be always wider than that prescribed in the Development Plan."

5. In order to appreciate the contentions advanced before me, it would be convenient to briefly acquaint with some of the relevant provisions of the new Town Planning Act and the BPMC Act. Section 3 of the new Town Planning Act provides that the State Government may, for the purpose of securing planned development of areas within the State, declare, by notification, and in such other manner as may be prescribed, any area in the State to be a development area. Section 5 provides that as soon as may be after the declaration of a development area under section 3, the State Government shall, by notification, constitute an authority for such areas to be called the area development authority. Section 9 enjoins duty on such area development authority to prepare a draft development plan for whole or any part of the development area. Section 12 speaks of the contents of the draft development plan. Suffice it to say that sub-clause (d) of clause 2 of section 12 provides for roads, highways, parkways etc. Chapter V deals with the Town Planning Schemes. Section 40 provides for contents of a town planning scheme. Sub-clause (1) of section 40 provides that the appropriate authority may make one or more town planning schemes for the development area or any part thereof, regard being had to the proposals in the final development plan. Sub-section (3) of section 40 speaks of the contents which may be included in the town planning scheme. For the present purpose, reference may be made to sub-clause (c) of clause (3) of section 40 which reads as under:

"(c) lay-out of new streets or roads, construction, diversion, extension, alteration, improvement and closing up of streets and roads and discontinuance of communications; "

Sub-section (3) of section 65 provides that on and after the date fixed in such notification, the preliminary scheme or the final scheme, as the case may be, shall have effect as if it were enacted in this Act. Thus, a brief survey of the provisions of the new town planning act indicates that on declaration of a development area, a the development authority is required to prepare a draft plan. A draft plan is required to contain number of items which include roads, highways, parkways etc. A draft plan is revised after a period of 10 years. A town planning scheme is required to be prepared by the appropriate authority for the development area or any part thereof having regard to the final development plan. Thus, a town planning scheme may be prepared even if there is no development plan. The only requirement is that there is a development plan and the same shall also be kept in view. Among others, the town planning scheme is required to carry provisions for streets or roads. Once the town planning scheme is sanctioned, it acquires the status of a statute under the provisions of sub-section (3) of section 65. Variation under the scheme is permissible only in accordance with the provisions of section 71 of the Act and the other provisions thereto. Thus, no variation can take place in the sanctioned scheme unless the procedures provided for variation is followed.

6. Referring to the provisions of the BPMC Act, section 2 of sub-section (52) defines Public street which reads as under:

"(52) "public street" means any street -

- (a) heretofore levelled, payed, installed, channeled, sewerred or repaired out of municipal or other public fund, or
- (b) which under the provisions of section 224 is declard to be, or under any other provision of this Act becomes, a public street"

Sub-section (63) of section 2 defines "street" which reads as under:

"Street" includes any highway and any causeway,

bridge, arch road, lane, footway, sub-way, court, alley or riding path or passage, whether a thoroughfare or not, over which the public have a right of passage or access or have passed and had access uninterruptedly for a period of twenty years, and, when there is a footway as well as a carriage way in any street, the said term includes both"

A reading of the definition of street indicates that it includes not only the highway, road etc. but also the footpath. Chapter XIV deals with streets. Section 202 provides for vesting of public streets in Corporation. Section 203 provides for power of the Commissioner in respect of public streets. Section 206 provides that the Corporation shall from time to time with the sanction of the State Government, specify the minimum width of public streets according to the nature of the traffic likely to be carried thereon, localities in which they are situated, the heights upto which buildings abutting thereon may be erected and other similar considerations. Section 209 gives power to the Commissioner to acquire premises for improvement of public streets. Section 210 gives power to the Commissioner to prescribe street or road line. Section 210 reads as under:

"(1) The Commissioner may

(a) prescribe a line on one or both sides of any public street:

Provided that every regular line of a public street operative under any law for the time being in force in any part of the City on the day immediately preceding the appointed day shall be deemed to be a street line for the purposes of this Act until a street line is prescribed by the Commissioner under this clause"

(b) from time to time, but subject in each case for the previous approval of the Standing Committee, prescribe a fresh line in substitution for any line so prescribed or for any part thereof:

Provided that such approval shall not be accorded unless, at least one month before the meeting of the Standing Committee at which the matter is decided, public notice of the proposal has been given by the Commissioner by advertisement in the local newspaper and special notice thereof,

signed by the Commissioner, has also been put up in the street or part of the street for which such fresh line is proposed to be prescribed and until the Standing Committee has considered all objections to the said proposal made in writing and delivered at the office of the Municipal Secretary not less than three clear days before the day of such meeting.

- (2) The line for the time being prescribed shall be called "the regular line of the street".

Section 212 gives additional power to the Commissioner to order setting back of the building to regular line of street. Section 212 reads as under:

"(1) If any building or any part thereof is within the regular line of a public street and if, in the opinion of the Commissioner, it is necessary to set back the building to the regular line of street he may, if the provisions of section 211 do not apply, by written notice -

- (a) require the owner of such building to show cause within such period as is specified in such notice, by a statement in writing subscribed by him or by an agent duly authorised by him in that behalf and addressed to the Commissioner, why such building or any part thereof which is within the regular line of the street shall not be pulled down and the land within the said line acquired by the Commissioner, or

- (b) require the said owner on such day and at such time and place as shall be specified to such notice to attend personally or by an agent duly authorised by him in that behalf and show cause why such building or any part thereof which is within the regular line of the street shall not be pulled down and the land within the said line acquired by the Commissioner.

- (2) If such owner fails to show sufficient cause to the satisfaction of the Commissioner why such building or any part thereof, which is within the regular line of the street shall not be pulled down and the land within the said line acquired as aforesaid the Commissioner may, with the approval of the Standing Committee, require the owner by a written notice to pull down the building or the part thereof which is within the

regular line of the street (and where a part of building is required to be pulled down, to also enclose the remaining part by putting up a protecting frontage wall) within such period as is prescribed in the notice.

- (3) If within such period the owner of such building fails to pull down such building or any part thereof coming within the said line, the Commissioner may pull down the same and all the expenses incurred in so doing shall be paid by the owner.
- (4) The Commissioner shall at once take possession on behalf of the Corporation of the portion of the land within the said line theretofore occupied by the said building, and such land shall thenceforward be deemed a part of the public street and shall vest as such in the Corporation.
- (5) Nothing in this section shall be deemed to apply to buildings vesting in the Government."

Thus, a brief survey of the relevant provisions of the BPMC Act indicates that the public street vests in the Corporation. There is a statutory obligation on the Commissioner to prescribe a line on both the sides of the public street or road. The provisions further give additional power to the Commissioner to order demolition of building or part of the building, if in his opinion it is outside the regular line of the public street.

7. The concept of prescribing a line or a regular line or a street line is not new. A Civic body in order to secure uniformity of appearance, draw a line on the sides of the road, and projection of building or part thereof beyond the "line" is not allowed. It may have some relevance with the width of the road, but it does not necessarily or solely depends on the width alone. There are number of factors which are required to be considered by the authority in prescribing the street line. This power of a Civic body has been recognized by the Legislation under section 210 of the BPMC Act. Prescribing a "line" is a distinct, independent statutory power of the Commissioner under the BPMC Act. It is an obligatory power in public interest. It is significant to notice that while there is a provision of drawing a street line or a regular line under the BPMC Act, there is no such provisions in the Town Planning Act. Under the Act, the Town Planning Scheme requires various items

to be prescribed, which includes "road" but not the "regular line." The Legislature in its wisdom has not provided any provisions with respect to regular line or street line in the Town Planning Act and has conferred this power on one of the most important executive authority of the scheme, i.e. Municipal Corporation. Thus, there is no conflict in powers under section 210 of the BPMC Act and sanctioned scheme under the Act and as such the question of altering or variation of the scheme does not arise, whether it is a case of width of the road or shortening the size of the final plot. Viewing from another angle also, a Regular line or street line brings all the buildings on the road in line. It being in larger public interest, any individual building or part thereof even on the final plot under the sanctioned scheme must give way to the line prescribed under the Act.

8. It is next contended by Mr Shailesh Brahmabhatt, learned Advocate that the impugned order prescribing "Line" is illegal for another reason that the Commissioner has not followed the procedures provided under section 210(b) i.e. the approval of the Standing Committee has not been obtained. He also submits that the commissioner could not have exercised the powers under section 210(a) as the powers under the said provision can be exercised only when a line is to be prescribed for the first time. He submits that the question of prescribing a line for the first time in the year 1994 does not arise for the simple reason that the road has been in existence since long and the line must have been prescribed by the Commissioner when the road was first constructed by the Corporation on the C.G. Road. The first contention i.e. following of provisions provided under section 210(b) is not sustainable as the Commissioner has exercised the powers under section 210(a). Taking the second limb of contention, the categorical case of the respondent-Corporation is that by the impugned order the "Line" was prescribed for the first time. Therefore, no inference can be drawn that the line must have been prescribed when the C.G. Road was first constructed. A supplementary affidavit has been filed by Mr P K Ruwala, Estate Officer of the Ahmedabad Municipal Corporation. He has stated that the road which has been provided in the Town Planning Scheme No.3 is now known as C.G. Road. The width of the road was 80 ft. With respect to laying down of the line, Mr Ruwala, in para 3 of his affidavit dated 27.6.1996, has stated as follows:

"I submit that for the first time after the said Town Planning Road, the Municipal Commissioner prescribed road line under section 210(1)(a) of the BPMC Act. I submit that the road was provided in the Town Planning Scheme by the State Government which has become part of the Act vested in the Corporation free from all incumbrance as per the provisions of the Town Planning Act, thereafter under Corporation Act, for the first time, the line was prescribed on both the sides of the public street, there was no regular line of street which was prescribed under any law on the day immediately preceding the appointed day under Municipality Act. or BPMC Act."

He has further stated in para 4 as under:

"I submit that in number of cases roads provided under the Town Planning Scheme were widened for the first time by putting road line under the provisions of section 210 (1)(a) of the BPMC Act, by the Municipal Commissioner."

9. Thus, on facts there is no substance in the contention raised by the learned Advocate for the petitioner. Mr Brahmhatt has still argued that filing of the affidavit alone is not sufficient and the respondent be directed to produce the record of the time when the C.G. Road was constructed and that will show that it must have provided two edges on the width of the road, and that should be presumed to be a "Line" prescribed, which is the deemed line under the provisions of sub-clause (a) of section 210. The prayer cannot be accepted.~ At the first instance there is no reason to disbelieve the affidavit filed by an officer of the Corporation. Secondly, even if the affidavit is excluded from consideration simply because the road has been constructed by the Municipal Corporation and it has two edges, it cannot be said that a regular line must have been prescribed by the Municipal Corporation. Prescribing a line or a regular line or street line is a positive act of the authority under any law in force at the relevant time and it is not a matter of assumption. There is no material on record to show that prior to 1994, the line was prescribed either under the BPMC Act or under the Bombay Town Planning Act. It is not in dispute that either under the Bombay Town Planning Act or under the new Act there is no provision of prescribing the line, and as such the question of prescribing the

"line" does not arise. Learned Advocate has referred to a Division Bench judgment of this Court in the case of *Girdharlal Ganpatram v. The Ahmedabad Municipal Corporation* reported in 1 GLR 223. It was a case of change or substitution of the existing street line and in that context, the Court held that the provisions of section 210(1)(b) was to be followed. In this case, as I have already held that the line was prescribed by the Municipal Commissioner in the year 1994 for the first time, and therefore, obviously the provisions of section 210(1)(b) are not attracted and the procedure provided therein are not required to be followed. In view of this, the second contention raised by the learned Advocate for the petitioner also fails.

10. The third contention of the learned Advocate is that the portion of the petitioner's shop was sought to be demolished and the land was required for the purpose of widening the road, but in fact, it is sought to be utilised for the purpose of parking. Therefore, the contention is that the notice given under section 212 of the BPMC Act is bad in law for the reason that the purpose for which it was sought to be acquired has been changed. It is further submitted that the petitioner has also not been heard on the question that the land is sought to be acquired for the purpose of parking. He further submits that powers under section 212 can be acquired only for the purpose of widening the road and not for the purpose of parking. There is no substance in any of the submissions. The plain and simple case of the respondent is that as part of the shop of the petitioner is projected beyond the "Prescribed Line", that part is required to be removed. Since I have upheld the act of prescribing "Line", the purpose for which the land is sought to be acquired becomes irrelevant. Even otherwise, it is now well settled that the land sought to be acquired for the purpose may be used for other purposes. Reference may be given to a decision of the Apex Court in the case of *State of Tamil Nadu v. L. Krishnan & Ors.*, reported in JT 1996 (1) SC 660 and in the case of *Union of India & Ors. v. Jaswant Rai Kochhar & Ors.*, reported in JT 96(3) SC 671.

11. It is lastly submitted that the impugned action of the respondent is mala fide as it is ploy to help the builders who have constructed Commercial Complexes on C.G. Road. According to the petitioner, certain buildings have been raised on the C.G. Road against the

relevant rules, inasmuch as they have not provided parking places or if they were provided initially, they have now been converted into shops and now they are being regularised by the Municipal Corporation. Therefore, the Municipopai Corporation is trying to provide parking place in order to accommodate those erring builders who have either not provided with parking facilities or the same has been converted into shops.

12. Mr P G Desai, learned Advocate appearing for the respondent-Corporation has denied the allegation. He has submitted that strict action will be taken against the persons who have contravened the rules or bye-laws and such cases will not be regularised. In view of this, the allegation does not require further scrutiny. It is further contended by Mr Brahmbhatt that the fancy footpath and car parking has narrowed the width of the road and on account of this, lot of inconvenience is caused to the public at large. I am not inclined to enter into this aspect of the matter as it will be hazardous to enter into the question in absence of proper prayer, pleadings and materials on record. However, it appears that there is some disorder and traffic congestion which may be on account of the work in progress and which could be attributed to a haphazard way of working of the contractors. But all these appear to be temporary phase. All the efforts made by the Corporation appear to be in the right direction and the citizen should cooperate. There is a necessity to develop a traffic sense and to educate the people in this regard. However, it is expected that the Corporation will ensure that no inconvenience is caused to the public, even for a temporary period. Problem can be eased if the working of contractor is regulated by the engineers of the Corporation and proper traffic arrangement. In view of this, I direct the Commissioner, Municipal Corporation to convene a meeting with the Police Commissioner, Ahmedabad and other concerned persons including the contractor or the Agency carrying out the Road and Parking work on the C.G. Road, to regulate the work and the traffic. The Commissioner, Ahmedabad Municipal Corporation shall report the compliance of this order to this Court on 5th of August, 1996. It is made clear that if for the concerned authorities it is not possible to remove the temporary inconveniences, efforts should be made to minimise the same.

13. In the aforesaid view of the matter, there is no merit in this Special Civil Application and the same is

accordingly rejected. Rule discharged.

14. At this stage, learned Advocate for the petitioner submits that the interim relief granted by this Court may further be extended for a period of 15 days. This prayer is being opposed by Mr P G Desai, learned Advocate for the respondent. Considering the facts and circumstances of the case, the interim relief granted earlier is extended for a further period of 15 days.

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